

Updates on Safe Drinking Water Act and Clean Water Act During the COVID-19 Pandemic

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Safe Drinking Water Act

To date, the novel coronavirus has not been detected in drinking water. The Centers for Disease Control (CDC) has reported that the conventional water treatment methods employed by municipal drinking water systems, including filtration and disinfection, should remove or inactivate the virus that causes COVID-19. Moreover, the U.S. Environmental Protection Agency (EPA or Agency) has announced that the risk to water supplies remains low, and Americans can continue to use and drink water from their taps as usual.

EPA expects operators of the nation's public water systems to continue normal operations and maintenance. In fact, in its March 26 temporary enforcement discretion policy, which we previously wrote about here, EPA stressed its heightened expectations for public water systems during the COVID-19 crisis, noting that access to clean water for both drinking and handwashing is critical. The temporary policy also instructs public water systems to continue with the sampling required under the Safe Drinking Water Act, with particular emphasis on conducting the monitoring required by the National Primary Drinking Water Regulations that protect against pathogens.

Given these heightened expectations, EPA has emphasized the importance of granting critical-infrastructure-worker status to water and wastewater workers. Indeed, on March 27, 2020, EPA Administrator Andrew Wheeler sent a letter to all governors, requesting that their states consider water and wastewater workers, as well as the manufacturers and suppliers who provide vital services and materials to the water sector, to be essential workers. In addition to declaring water and wastewater essential businesses, states and cities are also taking actions to prioritize access to clean water during the COVID-19 crisis. Some, such as Michigan and California, have adopted consumer protections, including halting water service cut-offs and reconnecting water service to customers whose service was previously terminated. Still, many more are demanding that Congress approve legislation to implement a nationwide moratorium on the shut-off of water, among other essential utilities, as part of the fourth COVID-19 stimulus package.

Clean Water Act Monitoring, Sampling, and Reporting During COVID-19

EPA recently announced plans to relax enforcement related to electronic reporting under the Clean Water Act's National Pollutant Discharge Elimination System (NPDES) program. Following release of the aforementioned March 26 temporary enforcement discretion policy, on March 31, 2020, the Agency issued a [reporting advisory](#) to EPA Regional offices regarding how to implement the temporary policy to NPDES reporting requirements.

Created by the Clean Water Act, the NPDES program is the permit program by which EPA regulates point sources that discharge pollutants into waters of the United States. The NPDES eRule at 40 CFR part 127 sets forth requirements for electronic reporting of information by NPDES permittees, as well as electronic reporting of NPDES information to EPA by the states, tribes, or territories that have received authorization from EPA to implement the NPDES program. Reports submitted pursuant to the NPDES eRule are tracked in EPA's Integrated Compliance Information System for the NPDES program (ICIS-NPDES). Permittees are required to report discharge monitoring data using this system, and in many cases, failure to appropriately report to the ICIS-NPDES system results in an automatic generation of non-receipt violations.

EPA's reporting advisory addresses instances where the COVID-19 pandemic interferes with an authorized NPDES permittee's ability to perform required monitoring, sampling, and reporting, or prevents an NPDES permittee from timely reporting to EPA as required by the NPDES eRule. Where reporting is not possible, EPA encourages permittees to use a No Data Indicator code, created specifically in response to COVID-19, which will indicate that the permittee believes the temporary policy applies to their monitoring/reporting obligations. By entering this code, the ICIS-NPDES system will not automatically identify a violation for non-receipt of discharge monitoring data.

Where a permittee is unable to report electronically, EPA may grant temporary or emergency waivers from electronic reporting, allowing a permittee to report on paper. If reporting is altogether impossible due to the pandemic, EPA instructs permittees to comply with the tenets of the temporary policy—namely, returning to compliance as soon as possible and documenting the noncompliance, as well as how COVID-19 caused such noncompliance. NPDES permittees impacted by the COVID-19 pandemic should therefore review both the reporting advisory and temporary policy carefully. Like the temporary policy, this NPDES reporting advisory is effective dating back to March 13, 2020, and will continue until the temporary policy is terminated.

Please do not hesitate to contact Eleni Kouimelis (312-558-5133, ekouimel@winston.com), Madalyn Brown (312-558-8141, mgbrown@winston.com) or your Winston relationship attorney if you have any questions.

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Authors

[Eleni Kouimelis](#)

[Madalyn Brown Feiger](#)

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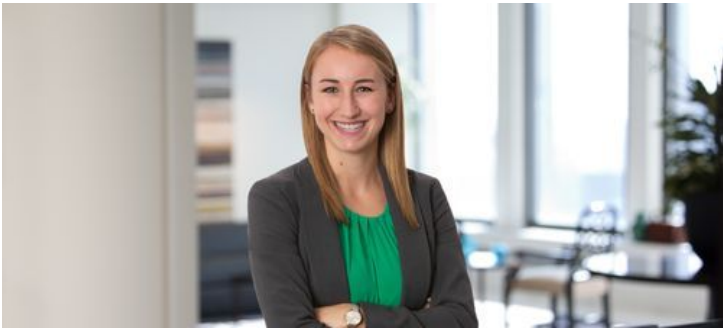
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